

Adopted	Rejected
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COMMITTEE REPORT

YES:	11
NO:	0

MR. SPEAKER:

*Your Committee on Commerce, Economic Development and Technology, to which was referred House Bill 1378, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT concerning utilities and transportation.
- 3 Delete everything after the enacting clause and insert the following:
- 4 SECTION 1. IC 8-1-9-6 IS ADDED TO THE INDIANA CODE AS
- 5 A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1,
- 6 2002]: **Sec. 6. (a) This section applies to a city having a population**
- 7 **of more than forty-six thousand five hundred (46,500) but less than**
- 8 **fifty thousand (50,000).**
- 9 **(b) The department of transportation shall:**
- 10 **(1) grant the city access to the highway rights-of-way:**
- 11 **(A) maintained and owned by the Indiana department of**
- 12 **transportation; and**
- 13 **(B) located in the city; and**

(2) permit the city to install water and sewer lines:

(A) in the highway rights-of-way maintained and owned by the Indiana department of transportation and located in the city; and

(B) beginning not more than twenty (20) feet from the curb (as defined in IC 8-23-1-18).

SECTION 2. IC 36-8-16.5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 5. As used in this chapter, "CMRS" refers to the commercial mobile radio service (as defined by 47 U.S.C. 332(d)(1)). The term includes the following:

(1) Services commonly referred to as wireless.

(2) Services provided by a wireless real time two-way voice communication device, including radio-telephone communications used in:

(A) cellular telephone service;

(B) personal communications service; or

(C) the functional or competitive equivalent of a radio-telephone communications line used in:

(i) cellular telephone service;

(ii) a personal communications service; or

(iii) a network radio access line.

(3) Any other wireless service that provides the user with direct access to a PSAP through the placement of a 911 call.

SECTION 3. IC 36-8-16.5-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 14. As used in this chapter, "subscriber" refers to a **standard** subscriber ~~for or a prepaid subscriber of~~ CMRS service.

SECTION 4. IC 36-8-16.5-14.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 14.5. As used in this chapter, "prepaid subscriber" refers to a CMRS subscriber who pays in full prospectively for the service and is issued an Indiana telephone number or an Indiana identification number for the service.**

SECTION 5. IC 36-8-16.5-14.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 14.7. As used in this chapter, "standard subscriber" refers to a CMRS subscriber who pays retrospectively for the service and has an Indiana billing address**

1 **for the service.**

2 SECTION 6. IC 36-8-16.5-18 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 18. (a) The wireless
4 enhanced 911 advisory board is established. The board is a body
5 corporate and politic, and though it is separate from the state, the
6 exercise by the board of its powers constitutes an essential
7 governmental function.

8 (b) The following recommendations must be made to the governor
9 concerning the membership of the board:

10 (1) The executive committees of NENA and APCO shall jointly
11 recommend ~~one (1) individual from each of the five (5) wireless~~
12 ~~board regions established by section 17 of this chapter:~~ **three (3)**
13 **individuals.**

14 (2) The CMRS providers authorized to provide CMRS in Indiana
15 shall jointly recommend ~~five (5)~~ **three (3)** individuals.

16 (c) The board consists of the following ~~eleven (11)~~ **seven (7)**
17 members:

18 (1) The treasurer of state or the treasurer's designee. The treasurer
19 of state or the treasurer's designee is chairperson of the board for
20 a term concurrent with the treasurer of state's term of office.
21 However, the treasurer of state's designee serves at the pleasure
22 of the treasurer of state. ~~The treasurer of state or the treasurer's~~
23 ~~designee may vote on an issue before the board only to break a tie~~
24 ~~vote.~~

25 (2) ~~Five (5)~~ **Three (3)** members for a term of three (3) years who
26 are appointed by the governor after the governor considers the
27 recommendations of the executive committees of NENA and
28 APCO that are submitted under subsection (b)(1).

29 (3) ~~Five (5)~~ **Three (3)** members for a term of three (3) years who
30 are appointed by the governor after considering the
31 recommendations of the CMRS providers that are submitted
32 under subsection (b)(2).

33 (d) A member's position may be filled by the member's designee
34 who serves at the pleasure of the member.

35 ~~(d)~~ (e) A vacancy on the board is filled for the vacating member's
36 unexpired term in the same manner as the original appointment.

37 ~~(e) A member may not serve more than two (2) consecutive three~~
38 ~~(3) year terms on the board.~~

(f) Each member appointed under subsection (c)(2) or (c)(3) shall submit the name of a designee to the board. The board shall maintain a list of approved designees. A member appointed under subsection (c)(2) or (c)(3) may appoint a listed designee to fill the member's position **under subsection (d) or to act on behalf of the member at a meeting of the board.** The designee serves at the pleasure of the appointing member.

(g) A member may vote by proxy through another member.

SECTION 7. IC 36-8-16.5-19, AS AMENDED BY P.L.116-2000, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 19. A majority of the members of the board constitutes a quorum for purposes of taking action. Except as provided in section 39(b) of this chapter, the board may take action approved by a majority of the members of the board **present at a meeting of the board.**

SECTION 8. IC 36-8-16.5-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 24. The board shall select a third party to audit the fund every two (2) years to determine whether the fund is being managed in accordance with this chapter. ~~The third party auditor shall provide the audit to the board to use in determining whether to adjust the emergency wireless 911 fee under section 26 of this chapter.~~ The board shall pay for an audit by the third party auditor as an administrative cost of the board. ~~If the third party auditor finds that the wireless enhanced 911 fee structure does not reflect the actual costs required by the PSAPs and CMRS providers, the board shall reduce the fee to reflect the actual costs required by the PSAPs and CMRS providers.~~

SECTION 9. IC 36-8-16.5-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 25. Except as provided in section 34 of this chapter, the board shall assess a monthly ~~emergency~~ wireless **emergency** enhanced 911 fee on each CMRS ~~mobile telephone number that has a billing address in Indiana.~~ **subscriber.**

SECTION 10. IC 36-8-16.5-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 26. The board may adjust the ~~emergency~~ wireless **emergency** enhanced 911 fee that is assessed under section 25 of this chapter. The board shall assess the fees at rates that ensure full recovery over a reasonable period of time

of costs incurred by CMRS providers and PSAPs to develop and maintain an enhanced wireless 911 system. The fees may not:

- (1) be raised or lowered more than one (1) time in a calendar year;
- (2) be raised more than seven cents (\$0.07) by an adjustment; or
- (3) exceed one dollar (\$1) per month for each telephone number.

SECTION 11. IC 36-8-16.5-30 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 30. Except as provided in section 34 of this chapter, each CMRS provider ~~as part of its monthly billing process, shall bill each CMRS mobile telephone number for collect the emergency wireless emergency~~ enhanced 911 fee ~~The~~ as follows:

(1) A CMRS provider shall collect the fee from each standard subscriber as part of its normal monthly billing process and may list the fee as a separate line item on each bill. If a CMRS provider receives a partial payment for a monthly bill from a CMRS standard subscriber, the CMRS provider shall apply the payment against the amount the CMRS standard subscriber owes to the CMRS provider before applying the payment against the fee.

(2) A CMRS provider shall collect and remit to the board under section 36 of this chapter fees from its prepaid subscribers in an amount equal to the fee amount multiplied by the number of active prepaid subscriber accounts on the last day of each calendar month.

SECTION 12. IC 36-8-16.5-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 31. A CMRS provider, as part of its monthly billing process, may not pro-rate the monthly ~~emergency wireless emergency~~ enhanced 911 fee collected from the subscriber.

SECTION 13. IC 36-8-16.5-32 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 32. A CMRS provider is not required to take legal action to enforce the collection of the ~~emergency wireless emergency~~ enhanced 911 fee for which a subscriber is billed. However, a collection action may be initiated by the board. A court finding for the board in the action may award reasonable costs and attorney's fees associated with the collection action.

SECTION 14. IC 36-8-16.5-33 IS AMENDED TO READ AS

1 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 33. The wireless
2 **emergency** enhanced 911 fee is exempt from state and local taxation.

3 SECTION 15. IC 36-8-16.5-34 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 34. A CMRS number
5 is exempt from the **emergency** wireless **emergency** enhanced 911 fee
6 if the subscriber is any of the following:

7 (1) The federal government or an agency of the federal
8 government.

9 (2) The state or an agency or instrumentality of the state.

10 (3) A political subdivision (as defined in IC 36-1-2-13) or an
11 agency of a political subdivision.

12 SECTION 16. IC 36-8-16.5-35 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 35. A CMRS provider
14 may keep two percent (2%) of the **emergency** wireless **emergency**
15 enhanced 911 fee collected each month from each subscriber for the
16 purpose of defraying the administrative costs of collecting the fee.

17 SECTION 17. IC 36-8-16.5-38 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 38. To recover costs
19 under section 37 of this chapter, a CMRS provider must submit a full,
20 sworn, true, complete, and detailed cost recovery plan. The board must
21 approve the plan before the CMRS provider may recover costs from the
22 fund under section 37 of this chapter. ~~The board may not approve an~~
23 ~~invoice if:~~

24 ~~(1) reimbursement of a cost described in the invoice is not related~~
25 ~~to compliance with the requirements of the FCC order; or~~

26 ~~(2) payment of the invoice would result in payment of more than~~
27 ~~one hundred twenty-five percent (125%) of the total amount~~
28 ~~contributed to the fund by a CMRS provider;~~

29 ~~unless the board approved the cost before it was incurred by the CMRS~~
30 ~~provider.~~

31 SECTION 18. IC 36-8-16.5-39, AS AMENDED BY P.L.116-2000,
32 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
33 JULY 1, 2002]: Sec. 39. (a) Except as provided by section 26 of this
34 chapter and subsection (b), the fund must be managed in the following
35 manner:

36 (1) Three cents (\$0.03) of the **emergency** wireless **emergency** 911
37 fee collected from each subscriber must be ~~held deposited~~ in an
38 ~~interest bearing~~ escrow account to be used ~~for to reimburse~~

1 **CMRS providers and PSAPs for costs associated with**
 2 **implementation of phase two (2) of the FCC order. The board**
 3 **may invest money in the account in the manner prescribed by**
 4 **section 23 of this chapter and may use the proceeds of the**
 5 **investments to reimburse CMRS providers and PSAPs under**
 6 **this subdivision.** The board shall reevaluate the fees placed into
 7 escrow not later than May 1, 2000. The board shall determine if
 8 the fee should be reduced, remain the same, or be increased based
 9 on the latest information available concerning the costs associated
 10 with phase two (2) of the FCC order.

11 (2) At least twenty-five cents (\$0.25) of the ~~emergency~~ wireless
 12 **emergency** 911 fee collected from each subscriber must be ~~held~~
 13 **deposited in an escrow account** and used to reimburse CMRS
 14 providers for the actual costs incurred by the CMRS providers in
 15 complying with the wireless 911 requirements established by the
 16 FCC order and rules that are adopted by the FCC under the FCC
 17 order, including costs and expenses incurred in designing,
 18 upgrading, purchasing, leasing, programming, installing, testing,
 19 or maintaining all necessary data, hardware, and software
 20 required to provide service as well as the costs of operating the
 21 service. **The board may invest money in the account in the**
 22 **manner prescribed by section 23 of this chapter and may use**
 23 **the proceeds of the investments to reimburse CMRS providers**
 24 **under this subdivision.** Except as provided by section 38 of this
 25 chapter, the ~~carrier~~ **CMRS provider** may only request funds for
 26 true cost recovery. The board may increase the amount held in
 27 escrow under this subdivision not more than one (1) time a
 28 calendar year. If the board adjusts the ~~emergency~~ wireless
 29 **emergency** 911 fee under section 26 of this chapter within a
 30 calendar year, an adjustment to the amount held in escrow under
 31 this subdivision for the calendar year must be made at that time.

32 (3) Two percent (2%) of the ~~emergency~~ wireless **emergency** 911
 33 fee collected from each subscriber may be used by the board to
 34 recover the board's expenses in administering this chapter.
 35 However, the board may increase this percentage at the time the
 36 board may adjust the monthly fee assessed against each ~~CMRS~~
 37 **mobile telephone number subscriber** to allow for full recovery of
 38 administration expenses.

(4) ~~Money remaining in the fund~~ **The remainder of the wireless emergency 911 fee collected from each subscriber must be held in escrow and used for monthly distributions to eligible PSAPs that provide wireless enhanced 911 service and that have submitted written notice to the board. The board shall maintain a list of eligible PSAPs. The fund held in escrow under this subdivision must be distributed in the following manner:**

(A) ~~Ninety-eight percent (98%) must be distributed among~~
The board shall distribute on a monthly basis to each county containing one (1) or more eligible PSAPs, as identified by the county in the notice required under section 40 of this chapter, a part of the remainder based upon the county's percentage of the state's population (as reported in the most recent official United States census), served by each PSAP. A county must use a distribution received under this clause to reimburse PSAPs that:

(i) are identified by the county under section 40 of this chapter as eligible for distributions; and

(ii) accept wireless enhanced 911 service;

for actual costs incurred by the PSAPs in complying with the wireless enhanced 911 requirements established by the FCC order and rules.

(B) ~~Two percent (2%)~~ **The amount of the fee remaining, if any, after the distributions required under clause (A) must be distributed among the eligible PSAPs under a formula:**

(i) established by the board; and

(ii) based on a PSAP's CMRS 911 call volume: in equal shares between the escrow accounts established under subdivisions (1) and (2).

(b) Notwithstanding the requirements described in subsection (a), the board may transfer money between and among the accounts in subsection (a) in accordance with the following procedures:

(1) ~~A transfer must be approved by the affirmative vote of at least eight (8) board members. For purposes of acting under this subsection, the board must have a quorum consisting of at least one (1) member appointed under section 18(c)(2) of this chapter and at least one (1) member appointed under section 18(c)(3) of this chapter.~~

(2) **A transfer under this subsection must be approved by the affirmative vote of:**

(A) **at least fifty percent (50%) of the members present at a duly called meeting of the board who are appointed under section 18(c)(2) of this chapter; and**

(B) **at least fifty percent (50%) of the members present at a duly called meeting of the board who are appointed under section 18(c)(3) of this chapter.**

(3) **The board may make transfers only one (1) time during a calendar year.**

~~(3)~~ (4) **The board may not make a transfer that:**

(A) **impairs cost recovery by CMRS providers or PSAPs; or**

(B) **impairs the ability of the board to fulfill its management and administrative obligations described in this chapter.**

SECTION 19. IC 36-8-16.5-40 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 40. To be eligible to receive distributions from the fund under section 39 of this chapter, a PSAP must comply with the wireless enhanced 911 requirements established by the FCC order and rules. ~~adopted by the FCC under the FCC order. Distribution~~ **A county containing one (1) or more eligible PSAPs shall submit a written notice to the board that identifies each PSAP that complies with the FCC order and rules. Distributions under section 39 of this chapter to a PSAP county containing one (1) or more eligible PSAPs must begin in the first full month after the PSAP becomes eligible. board receives the county's written notice under this section. The county treasurer shall deposit the distributions as prescribed in section 43 of this chapter.**

SECTION 20. IC 36-8-16.5-42 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 42. (a) A CMRS provider shall submit to the board sworn invoices related to a request for reimbursement under section 39 of this chapter. **An invoice submitted under this section must contain language swearing or affirming, under the penalty of perjury, that the representations made in the invoice are accurate to the best of the signer's knowledge. The signer must be:**

(1) **an employee or officer of the CMRS provider submitting the invoice; and**

(2) **designated by the CMRS provider to sign on its behalf and**

1 **bind the CMRS provider to the representations made.**

2 The board may not approve an invoice **for submitted under this**
 3 **section if** reimbursement of ~~costs that are a cost described in the~~
 4 **invoice is** not related to compliance with the ~~wireless enhanced 911~~
 5 ~~service~~ requirements **established by of** the FCC order and the rules
 6 adopted by the FCC under the FCC order.

7 (b) If:

8 (1) the board receives a written complaint alleging that a CMRS
 9 provider has used money received under this chapter in a manner
 10 that is inconsistent with this chapter; and

11 (2) a majority of the board votes to conduct an audit of the CMRS
 12 provider;

13 the board may contract with a third party auditor to audit the CMRS
 14 provider to determine whether the CMRS provider has used money
 15 received under this chapter in a manner consistent with this chapter.

16 SECTION 21. IC 36-8-16.5-43 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 43. The distribution of
 18 ~~emergency~~ wireless ~~emergency~~ enhanced 911 funds ~~to the PSAPs~~ by
 19 the board **for cost recovery by PSAPs under section 39 of this**
 20 **chapter** must be deposited by ~~a the~~ county treasurer ~~or a municipal~~
 21 ~~fiscal officer~~ in a separate fund set aside for the purposes allowed by
 22 section 41 of this chapter. The fund must be known as the _____
 23 (insert name of county) ~~or municipality~~ **wireless** emergency telephone
 24 system fund. The county treasurer ~~or the municipal fiscal officer~~ may
 25 invest money in the fund in the same manner that other money of the
 26 county ~~or municipality~~ may be invested, but income earned from the
 27 investment must be deposited in the fund set aside under this section.

28 SECTION 22. IC 36-8-16.5-46 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 46. Notwithstanding
 30 any other law, the board, a PSAP, political subdivision, CMRS
 31 provider, local exchange company, or an employee, director, officer, or
 32 agent of a PSAP, political subdivision, CMRS provider, or local
 33 exchange company, **or a member of the board or the board chair, or**
 34 **an employee, an agent, or a representative of the board chair** is not
 35 liable for damages in a civil action or subject to criminal prosecution
 36 resulting from death, injury, or loss to persons or property incurred by
 37 any person in connection with establishing, developing, implementing,
 38 maintaining, operating, and providing **enhanced** wireless 911 service

1 in compliance with the requirements established by the FCC order and
2 rules adopted under the FCC order, except in the case of willful or
3 wanton misconduct.

4 SECTION 23. IC 36-8-16.5-17 IS REPEALED [EFFECTIVE JULY
5 1, 2002].

6 SECTION 24. [EFFECTIVE JULY 1, 2002] **Notwithstanding**
7 **IC 36-8-16.5-18, as amended by this act, a member appointed to the**
8 **wireless enhanced 911 advisory board under IC 36-8-16.5-18(c)(2),**
9 **before its amendment by this act, or under IC 36-8-16.5-18(c)(3),**
10 **before its amendment by this act, shall continue to serve on the**
11 **board until the expiration of the member's term. The governor**
12 **may not make a reappointment to any vacancy in the board under**
13 **IC 36-8-16.5-18(c)(2) or IC 36-8-16.5-18(c)(3), both as amended by**
14 **this act, until the total number of members of the board complies**
15 **with the total number of members of the board required by**
16 **IC 36-8-16.5-18, as amended by this act.**

17 SECTION 25. [EFFECTIVE UPON PASSAGE] (a) **As used in this**
18 **SECTION, "department" refers to the Indiana department of**
19 **transportation.**

20 (b) **Not later than July 1, 2002, the department shall form a task**
21 **force to identify barriers to the development of a multi-tenant**
22 **conduit system for fiber optic communications to be located in the**
23 **highway rights-of-way maintained and owned by the department.**

24 (c) **The task force formed under subsection (b) shall submit its**
25 **findings to the executive director of the legislative services agency**

- 1 **not later than November 1, 2002.**
- 2 **(d) This SECTION expires December 31, 2003.**
- 3 **SECTION 26. An emergency is declared for this act.**
 (Reference is to HB 1378 as introduced.)

and when so amended that said bill do pass.

Representative Fry